LEGISLATIVE RECAP 2011 LEGISLATIVE SESSION

HB 43 Clarify an Employer's Rights Related to Marijuana (Effective 5/6/11)

1. **Cause of the injury.** (39-71-407) An injury is not compensable if the major contributing cause is the employee's use of medical marijuana.
    a. An employer's knowledge of the employee's use of medical marijuana does not impact the eligibility for benefits.
2. **Benefit Impact.** (39-71-407)
    a. An Insurer is not liable for payment for medical marijuana or other costs associated with the use of medical marijuana.
    b. The benefits payable on a compensable claim cannot be increased or enhanced due to an employee's use of medical marijuana.
3. **Employer Limits.** (50-46-320) The bill also provides that an employer can have a provision in any contract that prohibits the medical use of marijuana. A cause of action for wrongful discharge or discrimination in employment cannot be maintained based on the Medical Marijuana Act.

HB 110 Generally Revise WC Laws (Effective 7/1/11)

1. **Fee Schedule.** (39-71-107) Provides a requirement for an insurer who uses a third party agent to review medical bills to obtain written certification that the agent will calculate the payment due passed on the MT WC medical fee schedules. Failure to pay the proper amount may subject the insurer to a penalty of $200-$1,000 per bill. Requires an insurer to pay undisputed medical bills within 60 days of receipt or it may be subject to a penalty of $200-1,000 per bill.
2. **Independent Contractor.** (39-71-418) Provides that an IC exemption certificate can be suspended if the putative IC does not have an independently established business.
3. **Security Deposit, Plan II.** (39-71-2215) Provides that the earnings on a Plan II security deposit inures to the insurer.

HB 118 MSF Board Members (Effective 3/25/11)

1. **Board Composition.** (2-15-1019) Provides that one of the seven members of the Board of Directors of the Montana State Fund must have executive management experience in an insurance company or executive level experience in insurance financial accounting.

HB 334 Generally Revise WC

1. **Closure of medical benefits** (39-71-704) 60 months from the date of injury or date of diagnosis of OD. (Applies to injuries and ODs occurring on or after 7/1/11- TTD'S and PPD's).
    a. Creates an exception from medical closure for the repair or replacement of prosthetic devices and for individuals who are permanently totally disabled.
    b. Allows medical benefits to be reopened for conditions that are a direct result of the injury or occupational disease when medical treatment is necessary for the individual to return to work or continue to work. (39-71-717)
        i. Provides a definition of "directly result" to address liability for related and subsequent conditions. (Defined in 39-71-116 to be a condition that was caused by or aggravated by an injury or occupational disease).
        ii. A request for reopening must be made no later than 5 years after the medical benefits terminated.
        iii. Provides for a medical panel (1-3 members including the DLI medical director) to review requests to reopen medical benefits.
        iv. Parties may stipulate to review by medical director only.

v. Medical benefits are opened for the length of time recommended by the medical panel, but must be reviewed every two years by the panel.
vi. Review is based on insurer information in file and additional relevant information may be submitted by insurer and claimant.
vii. No longer have 60 month termination for non use of medical benefits.

2. **Choice of physician**. (39-71-1101) (Applies to injuries and ODs occurring on or after 7/1/11).
    a. Provides that the worker can choose the initial person for treatment who can become the treating physician provided the physician agrees to coordinate the medical care; provide timely determinations such as MMI, return to work, restrictions, etc.; provide or arrange for treatment within the utilization and treatment guidelines; conduct or arrange for timely impairment ratings- subject to approval of the insurer- or designation of another treating physician.
    b. Upon acceptance of the claim, the insurer can either approve the individual chosen by the claimant or designate a "treating physician."
        i. The designation of treating physician results in premium pay for those individuals who agree to serve as the treating physician on a claim. Treating physicians receive 110% of the fee schedule amount; medical providers providing treatment prior to the designation of a treating physician receive 100% of the fee schedule amount; and other providers after the designation of a treating physician receive 90% of the fee schedule amount.
        ii. Insurer may redirect care at any time after acceptance of the claim.
    c. Insurers can still use and direct a claimant to a MCO or PPO for medical care, but MCO not needed to designate a treating physician.

3. **Medical fee schedules.** (39-71-704) (Effective on passage and approval and the rates in effect on the date the service is provided is controlling).
    a. The DLI adopted fee schedules rates and relative value units as of 12/31/10 are the minimum rates to be used until 6/30/2013. The changes allow medical reimbursement rates to be frozen for two years in anticipation of further study.
    b. Reimbursement varies based on status. (39-71-1101) Treating physician - 110% of fee schedule; all other health care providers – 90% of fee schedule; initial/emergency health care providers, prior to designation of the treating physician- 100% of fee schedule. (Note that the treating physician choice changes apply to injuries and ODs occurring on or after 7/1/11).

4. **Permanent Partial Disability**. (39-71-703) (Applies to injuries or ODs occurring on or after 7/1/11).
    a. Payment of permanent partial disability benefits depend on receiving an impairment rating greater than zero based on the 6th edition of the Guides to the Evaluation of Permanent Impairment and an actual wage loss.
    b. Individuals with a Class 1 (mild) impairment without an actual wage loss are not entitled to receive payment for the impairment rating or a wage loss benefit. Class II or greater ratings without wage loss will be entitled to payment of the impairment rating.
    c. Individuals with a Class 1 or greater impairment rating and an actual wage loss are eligible to receive PPD benefits including payment of the impairment rating, the wage loss benefit and other benefits (age, education, physical restrictions).
    d. Use 6th Guide to Impairments- set requirement in law (currently states use latest).
        i. The 6th edition applies retroactively to Jan. 1, 2008 (date when we began using 6th Edition).
    e. The number of weeks used to calculate the permanent partial disability benefit rose from 375 to 400.

5. **Settlement of Medical Benefits**. (39-71-741) (Effective on passage and approval for all claims regardless of the date of injury).
    a. An insurer and claimant can settle out all future medical benefits on a claim. (Currently, with limited exceptions, only disputed medical benefits are subject to being settled and closed out).
    b. The requirements for settlement are:
        i. The claimant must be at MMI;
        ii. The settlement must be in the best interests of the parties;
        iii. Both parties must willingly agree to the settlement;
        iv. The settlement must set forth the rationale; and
        v. The claimant must sign an acknowledgement identifying the claimant's understanding of the medical benefits terminated and closed due to the settlement.
        vi. Failure to agree to a settlement does not constitute a dispute concerning benefits.
    c. Applies retroactively to all dates of injury.

6. **Utilization and Treatment Guidelines** (39-71-704)
    a. Provides that DLI shall adopt rules to implement (currently states may).
    b. Provide that a medical director must be hired by DLI (currently states may).
    c. Provides that the U & T Guidelines establish compensable medical treatment for injured workers.
    d. Provides for annual review of the U & T Guidelines by DLI.

7. **Retroactive reimbursement for the waiting period**. (39-71-736) (Applies to injuries and ODs after 7/1/11).
    a. Retroactive Temporary Total payment for 4 day waiting period after a worker is totally disabled and unable to work in any capacity for 21 days or longer.
    b. Can be waived by the claimant if the claimant previously received sick leave or the claimant can repay the sick leave and take the retroactive TTD payment.

8. **Stay at Work/Return to Work**. (39-71-1011 et seq.) (Applies to injuries and ODs on or after 7/1/12).
    a. Establishes a SAW/RTW fund to pay for SAW/RTW services initiated by DLI. The fund is paid by an assessment on employers.
    b. Allows an insurer to create a SAW/RTW policy to provide services to injured workers.
    c. Emphasis is to return the worker to the same position with the same employer or to a modified position with the same employer as soon as possible after an injury or occupational disease.
    d. DLI can provide initial SAW/RTW services prior to an insurer's acceptance of the claim; if the insurer at risk declines to provide those services (within 3 business days of notice).
    e. After acceptance of the claim, the insurer must provide SAW/RTW services in accordance with its policy or by designating a rehabilitation provider.
    f. A worker, employer or medical provider may request SAW/RTW services.
    g. A worker is eligible for SAW/RTW services until the worker returns to work; refused an offer of employment at equal or greater pay; settled the claim; or until the worker meets the definition of a disabled worker.
    h. Provides automatic increases for auxiliary benefits indexed to the AWW increases.

9. **Course and Scope**. (39-71-407) (Applies to injuries/ODs occurring on or after 7/1/11).
    a. Provides that a worker is not in the course and scope of employment if injured while on a paid or unpaid break away from the work site and is not performing any tasks for the employer while on the break.

b. Provides that a worker is not in the course and scope of employment if injured while engaged in social or recreational activity unless the individual is being paid for the time; is required or requested to attend the activities.
    i. Defines "requested" to mean that the employer asked the worker to assume duties for the activity so that the worker's presence is not completely voluntary.
    ii. Requires that the injury be incurred in the performance of the assigned duties.

10. **Medical Status Form.** (39-71-1036)
    a. DOL to create the form.
    b. To be completed by the treating physician after every office visit.
    c. A laundry list of requirements for the form is put into statute including: diagnosis, medications, treatment plan, off work duration, release to modified duty, release to full duty, temporary work restrictions, permanent work restrictions, date of MMI and date of the next appt.

HB 359 Revise Laws on Settlements (Effective 3/23/11)

1. **Settlement of Undisputed Medical Benefits.** Modifies Section 39-71-741, MCA, to allow the settlement of all medical benefits on a claim.
    a. Requires Maximum Medical Improvement.
    b. Requires mutual agreement of the parties.
    c. Requires the settlement to be in the best interest of the parties.
    d. Requires the parties to set for the rationale that is the basis for the settlement.
    e. Requires a signed acknowledgment by the claimant stating the medical benefits will terminate due to the settlement.
    f. Provides that the failure of the parties to willingly agree to settle medical benefits is not a dispute over benefits.
    g. Applies retroactively for all dates of injuries.

HB 552 Provide WC Insurance to EMT Workers (Effective 7/1/11)

1. **Provides Optional Coverage for Volunteer EMS Workers.** (39-71-118)
    a. A Fire District, Fire Service Area, or Volunteer Fire Department May include volunteer EMTs as employees.
        i. All benefits are based on an elected wage. (The elected wage is capped at the state's AWW).
    b. An Ambulance Service may include a volunteer EMT as an employee.
        i. All benefits are based on an elected wage. (Allows an optional additional elected wage at the state's minimum wage for self-employed sole proprietors or partners who have not elected WC on themselves.)

SB 242 WC and Agricultural Workers (Effective 7/1/11)

1. **Amends the Definition of "Employee" for Certain Agricultural Workers.** (39-71-118)
    a. Excludes from the definition of employee individuals who are performing temporary agricultural work for an employer if:
        i. The person performing work is otherwise exempt from coverage under 401(2)(r) (corp. officer, manager of a manager managed LLC);
        ii. Primarily works at their own fixed business location;
        iii. Does not need to have an IC exemption because the individual does not regularly perform work away from their own fixed business location.

SB 287 Require Corp. Officers or Managers of LLCs to Obtain WC (Effective 7/1/11)

1. **Requires a Manager of a Manager Managed LLC in the Construction Industry to Obtain WC.**
   a. Must obtain WC Coverage or obtain an IC exemption. (39-71-401, 417)